

# CALIFORNIA INSTITUTE OF TECHNOLOGY JET PROPULSION LABORATORY

## GENERAL PROVISIONS: COMMERCIAL ITEMS OR SERVICES CONTRACT

GENERAL PROVISION TITLE	PAGE
AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS .....	3
AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS .....	3
ASBESTOS NOTIFICATION.....	3
ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES .....	3
AUTHORITY OF JPL REPRESENTATIVES AND REQUIRED NOTICES .....	4
BUY AMERICAN ACT – SUPPLIES.....	4
CHANGES.....	4
COMPLIANCE WITH EXPORT REGULATIONS.....	4
DEFINITIONS .....	4
DRUG-FREE WORKPLACE REQUIREMENTS.....	6
ELECTRICAL EQUIPMENT ACQUISITION.....	6
EQUAL OPPORTUNITY .....	6
EXCUSABLE DELAYS.....	7
EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING.....	7
FACSIMILE COPIES ACCEPTABLE.....	8
HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA .....	8
INSPECTION AND ACCEPTANCE.....	8
INSURANCE AND INDEMNIFICATION .....	8
NEW MATERIAL.....	10
NOTICE OF RADIOACTIVE MATERIALS .....	10
ORDER OF PRECEDENCE .....	10
PAYMENTS AND DISCOUNTS.....	10
RESPONSIBILITY FOR SUPPLIES.....	11
TAXES .....	11
TERMINATION FOR CAUSE - CIS.....	11
TERMINATION FOR CONVENIENCE - CIS.....	11
WARRANTY FOR COMMERCIAL ITEMS.....	11
YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK.....	11

(See Page 2 for Individual General Provision Applicability)

### **GENERAL PROVISIONS CANNOT BE ALTERED WITHOUT NASA APPROVAL**

The following attachments are incorporated into the General Provisions. Submission of an offer and beginning performance constitute certification and recertification per Form JPL 2892.

- Notification to Prospective Contractors of JPL's Ethics Policies and Anti-Kickback Hotline, Form JPL 2385
- Asbestos Notification, Form JPL 2895
- Notice of Potential Tax Withholding R 7/03

## **APPLICABILITY OF INDIVIDUAL GENERAL PROVISIONS**

### **APPLICABLE TO ALL TRANSACTIONS**

Assignment of Rights and Delegation of Duties  
Authority of JPL Representatives and Required Notices  
Buy American Act - Supplies  
Changes  
Definitions  
Excusable Delays  
Facsimile Copies Acceptable  
Inspection and Acceptance  
New Material  
Order of Precedence  
Payments and Discounts  
Responsibility for Supplies  
Taxes  
Termination for Cause - CIS  
Termination for Convenience - CIS  
Warranty for Commercial Items  
Year 2000 Compliance Requirement - New Work - CIS

### **FAR FLOWDOWNS APPLICABLE ACCORDING TO THEIR TERMS**

Affirmative Action for Handicapped Workers  
Affirmative Action for Special Disabled and Vietnam Era Veterans  
Equal Opportunity

### **APPLICABLE WHEN CONTRACTOR (SELLER) WORKS AT JPL SITE**

Asbestos Notification  
Insurance and Indemnification  
JPL Drug-Free Workplace Requirements

### **APPLICABLE IN SPECIAL CIRCUMSTANCES ACCORDING TO THEIR TERMS**

Compliance with Export Regulations  
Electrical Equipment Acquisition  
Existing Commercial Computer Software - Licensing  
Hazardous Material Identification and Material Safety Data  
Insurance and Indemnification  
Notice of Radioactive Materials

**AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01]  
[FAR 52.222-36 - 4/84]

(This Article applies to contracts over \$2,500, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference FAR 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

**AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.222-35 - 4/98]

(This Article applies to contracts over \$10,000, unless the work is performed outside the United States by employees recruited outside the United States.)

Incorporate by reference 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

**ASBESTOS NOTIFICATION** [CIS – 4/99]

(This Article applies if any of the Contract effort will be performed in JPL-Pasadena buildings.)

Contractor acknowledges receipt of the attached "Asbestos Notification," form JPL 2895, identifying JPL buildings containing asbestos and agrees to distribute the Notice to all its personnel prior to their commencing work in such buildings. Contractor agrees to coordinate with the JPL Safety Operations Section for special asbestos handling instructions to be given to all Contractor's personnel, including subcontractors' personnel, prior to their commencing work, if any, which could disturb asbestos in JPL-controlled buildings. The substance of this Article will be included in all subcontracts issued under this Article for work performed in JPL-Pasadena buildings.

**ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES** [CIS – 4/99] [FAR 52.232-23(a) – 1/86]

- (a) The Contractor may assign its rights to be paid amounts due or to become due as a result of the performance of this Contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.
- (b) Any such assignment or reassignment shall be subject to the following conditions:
  - (1) Any assignment or reassignment authorized under this provision shall cover all amounts payable under this Contract, and not paid as of (i) the effective date of assignment or (ii) the date JPL receives written notice of the assignment, whichever is later.
  - (2) No assignment may be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this Contract.
  - (3) Two copies of the notice of assignment, signed by the Contractor, shall be furnished to JPL, Attn: Accounts Payable.
  - (4) If a party other than the Contractor provides JPL with a notification that the amount due or to become due under this Contract has been assigned and that payment is to be made to the claimed assignee, JPL may withhold any payments which are due and payable under the Contract until JPL is furnished with either (i) verification or denial of assignment from the Contractor or (ii) reasonable proof that the assignment has been made.
  - (5) The Contractor shall not furnish or disclose to any assignee under this Contract any classified document (which term includes this Contract if access to classified material is authorized under this Contract) or information pertaining to classified work under this Contract unless JPL authorizes such action in writing.
  - (6) No assignment may be made which includes, either specifically or by implication, any delegation of the Contractor's duty to perform the services or provide the supplies required by this Contract unless such assignment and delegation is consented to by JPL in accordance with the provisions of paragraph (c) below.
- (c) The Contractor agrees that it will delegate no part of the duties required of it by this Contract without the prior written consent of JPL; provided, however, that nothing contained herein shall be deemed to prohibit the Contractor from placing purchase orders and subcontracts, subject, however, to the provision of this Contract entitled "Subcontracts," if any.

#### **AUTHORITY OF JPL REPRESENTATIVES AND REQUIRED NOTICES** [CIS – 4/99]

- (a) No order, notice, or direction received by the Contractor and issued pursuant to this Contract, shall be binding upon either the Contractor or the Institute, unless issued or ratified in writing by the JPL Negotiator, the Manager, Acquisition Division, JPL, or by representative(s) designated in writing by either of them.
- (b) Unless otherwise specified in this Contract, any notice which the Contractor is required to provide to JPL shall be directed to the JPL Negotiator, the Manager, Acquisition Division, JPL, or to the representative(s) designated in writing by either of them.

#### **BUY AMERICAN ACT – SUPPLIES** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [FAR 52.225-3 - 1/94]

(This Article applies to supply contracts exceeding \$2,500 and to contracts for services which involve the furnishing of supplies when the supply portion of the contract exceeds \$2,500.)

Incorporate by reference FAR 52.225-3, Buy American Act - Supplies.

#### **CHANGES** [CIS – 4/99] [FAR 52.212-4 – 4/98]

Changes in the terms and conditions of this Contract may be made only by written agreement of the parties.

#### **COMPLIANCE WITH EXPORT REGULATIONS** [CT, FP-NR&D FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 5-00]

- (a) Hardware, software and related materials, including technical data, may be subject to U.S. export control laws, including the U.S. Export Administration Act, Arms Export Control Act, and their associated regulations, and may be subject to export or import regulations in other countries. Contractor agrees to strictly comply with all U.S. Export Control Regulations and acknowledges that, when applicable, it has the responsibility to obtain export licenses, or other export authority as may be required, for hardware, software, and related materials and services, including technical data, related to the performance of this Contract, which are in its possession or under its control.
- (b) JPL's NASA Contracting Officer is required to provide reports to NASA headquarters on the status and location of government property which has left United States Territory. Contractor will not export any government property without prior approval from the NASA CO through the JPL negotiator.
- (c) (1) The International Traffic in Arms Regulation (ITAR) 22 CFR Parts 120 to 130 inclusive, and Export Administration Regulation (EAR) 15 CFR parts 730 to 774 inclusive, restrict foreign national access to technological information. This information is available on JPL Web Space, in unpublished JPL documents, through technical conversations with JPL employees, and through visual inspection of JPL hardware. For the purpose of this clause, foreign nationals are defined as all individuals in the United States or overseas who are not U.S. Citizens, holders of U.S. green cards, or holders of political asylum papers issued by the U.S. Department of State.
- (2) The Contractor shall not allow access by any foreign national to: JPL material which reveals technology, financial information, or business strategy information, and to JPL internal Web Space in performance of this Contract, without prior written approval by JPL Security, the JPL Network and Computer Security Group, and the JPL International and Legislative Affairs Office through the JPL Negotiator.
- (d) Contractor agrees to insert this clause, including this paragraph, in all subcontracts which could involve: an export as defined in the ITAR and EAR, subcontractor employee access to JPL Web Space, or subcontractor employee access to JPL material which reveals technology, financial information, or business strategy information.

#### **DEFINITIONS** [CIS 4/99] [FAR 52.202-1 – 10/95]

As used throughout this Contract, the following terms shall have the meanings set forth below:

- (a) The term "commercial component" means any component that is a commercial item.
- (b) The term "commercial item" means (see related term "nondevelopmental item" below):
  - (1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that:
    - (A) Has been sold, leased, or licensed to the general public; or
    - (B) Has been offered for sale, lease, or license to the general public;

- (2) Any item that evolved from an item described in paragraph (b)(1) of this Article through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a solicitation;
- (3) Any item that would satisfy a criterion expressed in paragraphs (b)(1) or (2) of this Article, but for:
  - (A) Modifications of a type customarily available in the commercial marketplace; or
  - (B) Minor modifications of a type not customarily available in the commercial marketplace made to meet JPL or Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;
- (4) Any combination of items meeting the requirements of paragraphs (b)(1), (2), (3), or (5) of this Article that are of a type customarily combined and sold in combination to the general public;
- (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (b)(1), (2), (3), or (4) of this Article, and if the source of such services:
  - (A) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
  - (B) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;
- (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
- (7) Any item, combination of items, or service referred to in subparagraphs (b)(1) through (6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
- (8) A nondevelopmental item, if the JPL Negotiator determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments (see definition below)
- (c) The term "component" means any item supplied as part of an end item or of another component.
- (d) The term "contract amount" means the Contract price, the estimated cost and fee, if any, or the ceiling price of the Contract.
- (e) The term "Contracting Officer" means the Government Contracting Officer for the Prime Contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (f) The term "Contractor" means the selling party to this Contract/Order with the California Institute of Technology (the Institute)/JPL being the buying party. The "Contractor" is the first tier subcontractor under the NASA Prime Contract between NASA and the Institute/JPL.
- (g) The term "FAR" means the Federal Acquisition Regulation as in effect on the date of this Contract, unless otherwise indicated.
- (h) The term "Government" means the Government of the United States of America, unless the context is otherwise.
- (i) The term "Government-furnished property (GFP)" includes JPL-furnished, Government-owned property.
- (j) The term "Institute" means the California Institute of Technology as a party to this Contract.
- (k) The term "JPL" means the Jet Propulsion Laboratory as the organizational element of the Institute having responsibility for administration of this Contract. The rights of JPL under this Contract are the rights of the California Institute of Technology as a party to this Contract.

- (l) The term "JPL negotiator" means the individual authorized to issue and administer this Contract for JPL.
- (m) The term "NASA" means the National Aeronautics and Space Administration.
- (n) The term "NFS" means the NASA FAR Supplement as in effect on the date of this Contract, unless otherwise indicated.
- (o) The term "nondevelopmental item" means:
  - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
  - (2) Any item described in paragraph (o)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring activity; or
  - (3) Any item of supply being produced that does not meet the requirements of paragraph (o)(1) or (2) solely because the item is not yet in use.
- (p) The term "person" means any individual, partnership, corporation, association, institution or other entity.
- (q) The term "Prime Contract" means the Contract between the Institute and NASA for the United States of America (herein called the Government).
- (r) The term "Schedule" means the statements in the order/contract including statement of work, description of items to be supplied, delivery dates, special provisions, options and any other statements excluding the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (s) The term "subcontract," as used in this Contract, includes, but is not limited to, purchase orders under this Contract.
- (t) The terms "United States" or "U.S." mean the United States of America.

**DRUG-FREE WORKPLACE REQUIREMENTS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99] [FAR 52.223-6 – 1/97]

The Contractor agrees to inform all Contractor personnel, prior to their first entrance upon JPL premises, that JPL's policy is to fully comply with the requirements of the Drug-Free Workplace Act and that Contractor personnel are required to comply with JPL's policy of maintaining a drug-free workplace.

**ELECTRICAL EQUIPMENT ACQUISITION** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99]

(This Article is applicable if the Contract involves acquisition of off-the-shelf electrical equipment for delivery to or use by JPL or its designees.)

The electrical equipment being provided by the Contractor under this Contract shall be listed by Underwriters Laboratory, Factory Mutual Insurance Association, Canadian Standards Association, or similar organization of recognized standing. In the event that the equipment does not carry an appropriate approval, the individual components making up the item must be listed. Proof of listing shall be provided with delivery of the equipment in the form of accompanying data or labels. Any item not conforming to these requirements may be returned to the Contractor at the Contractor's expense. The Contractor agrees to require subcontractors, if any, which supply electrical equipment for delivery to or use by JPL or its designees to comply with this Article.

**EQUAL OPPORTUNITY** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 8/01] [FAR 52.222-26 – 4/84]

(The following Article is applicable unless this Contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor issued under Executive Order 11246, as amended; for example, work performed outside the United States by employees recruited outside the United States is exempt from the requirements of this Article. If, during any 12-month period [including the 12 months preceding the award of this Contract], the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with FAR 52.222-26 during performance of this Contract. Upon request, the Contractor shall provide information necessary to determine the applicability of this Article.)

Incorporate by reference FAR 52.222-26, Equal Opportunity (E.O. 11246).

#### EXCUSABLE DELAYS [CIS – 4/99]

The Contractor shall be liable for default, unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of JPL in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify JPL in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to JPL of the cessation of such occurrence.

#### EXISTING COMMERCIAL COMPUTER SOFTWARE – LICENSING [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, CREI – 4/99] [NFS 1852.227-86 – 12/87]

(This Article is applicable to the acquisition of any existing commercial computer software under this Contract.)

- (a) Any delivered commercial computer software (including documentation thereof) developed at private expense and claimed as proprietary shall be subject to the restricted rights in paragraph (d) below. Where the Vendor/Contractor proposes its standard commercial software license, only those applicable portions thereof which comply with the other provisions of this Contract, Federal laws, FAR and NFS, including the restricted rights in paragraph (d) below, are incorporated into and made a part of this Purchase Order/Contract.
- (b) Although the Vendor/Contractor might not propose its standard commercial software license until after this Purchase Order/Contract has been issued, or at or after the time the computer software is delivered, such license shall nevertheless be deemed incorporated into and made a part of this Purchase Order/Contract under the same terms and conditions as in paragraph (a) above. For purposes of receiving updates, correction notices, consultation, and similar activities on the computer software, any authorized user may acknowledge receipt of a registration form or card and return it directly to the Vendor/Contractor; however, such signing shall not add to or alter any of the terms and conditions of this Article or the Purchase Order/Contract into which this Article is incorporated.
- (c) The Vendor's/Contractor's acceptance is expressly limited to the terms and conditions of this Purchase Order/Contract. If the specified computer software is shipped or delivered to JPL or NASA, it shall be understood that the Vendor/Contractor has unconditionally accepted the terms and conditions set forth in this Article, and that the terms and conditions of this Purchase Order/Contract (including the incorporated license) constitute the entire agreement between the parties concerning rights in the computer software.
- (d) The following restricted rights shall apply:
  - (1) The commercial computer software may not be used, reproduced, or disclosed by the Institute or the Government except as provided below or otherwise expressly stated in the Purchase Order/Contract.
  - (2) The commercial computer software may be:
    - (A) Used, or copied for use, in or with any computer owned or leased by, or on behalf of, the Government, or the Institute in support and furtherance of its Government contract obligations; provided, the software is not used, nor copied for use, in or with more than one computer simultaneously, unless otherwise permitted by the license incorporated under paragraphs (a) or (b) above;
    - (B) Reproduced for safekeeping (archives) or backup purposes;
    - (C) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software shall be subject to the same restricted rights; and
    - (D) Disclosed and reproduced for use by Government or Institute contractors or their subcontractors in accordance with the restricted rights in subdivisions (A), (B), and (C) above; provided they have the Government's or the Institute's permission to use the computer software and have also agreed to protect the computer software from unauthorized use and disclosure.
  - (3) If the incorporated Vendor's/Contractor's software license contains provisions or rights that are less restrictive than the restricted rights in subparagraph (d)(2) above, then the less restrictive provisions or rights shall prevail.
  - (4) If the computer software is published, copyrighted computer software, it is licensed to the Government, and in support and furtherance of its Government contract obligations, the Institute, without disclosure prohibitions, with the rights in subparagraphs (d)(2) and (3) above.



- (5) The computer software may be marked with any appropriate proprietary notice that is consistent with the rights in subparagraphs (d)(2), (3), and (4) above.
- (e) The Contractor warrants that it has the right to sell, license, or transfer the license for the software furnished to the customer under this Contract in accordance with the terms of this Contract.

**FACSIMILE COPIES ACCEPTABLE** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI, A-E – 4/99]

The parties agree that facsimile (fax) copies of contract documents are just as binding as originally executed documents.

**HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH-T&M, FPC, CREI – 4/99] [FAR 52.223-3 – 1/97, Alt. I – 7/95]

(This Article applies if any materials are to be supplied which are defined as hazardous under the latest version of Federal Standard No. 313 [including revisions adopted during the term of the Contract].

Incorporate FAR 52.223-3 [Jan 97, Alt. I, Jul 95] with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects including safety and rights to data.)

**INSPECTION AND ACCEPTANCE** [CIS – 4/99] [FAR 52.212-4 – 5/97]

- (a) Inspection/Acceptance. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. JPL reserves the right to inspect or test any supplies or services that have been tendered for acceptance. JPL may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with Contract requirements. JPL must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) The Contractor shall remove supplies rejected or required to be corrected. However, JPL may require or permit correction in place promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (c) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, JPL may either (i) by Contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (ii) terminate the Contract for default as provided in the Article of this Contract entitled "Termination" for Cause." Unless the Contractor corrects or replaces the supplies within the delivery schedule, JPL may require their delivery and make an equitable price reduction.
- (d) Inspections and tests by JPL do not relieve the Contractor of responsibility for defects or other failures to meet Contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as regards JPL's rights under any warranty or guarantee, or as otherwise specified in this Contract.

**INSURANCE AND INDEMNIFICATION** [FP-NR&D, FP-R&D, CIS, LH-T&M, T&MC – 2/00] [FAR 52.228-5 - 9/89]

(Work performed outside the United States is exempt from the requirements of this Article.)

- (a) This Article is applicable if:
- (1) The performance of this Contract includes activities which could endanger non-Contractor personnel and such activities are performed at a location which is not secured by appropriate Contractor-controlled access restrictions; or
  - (2) This Contract requires work on a Government installation or premises under the control of the Institute, unless:
    - (A) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
    - (B) All such work is to be performed outside the United States, its possessions, or Puerto Rico.
- (b) Insurance. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this Contract at least the following kinds and minimum amounts of insurance with the Institute



named as an additional insured in policies for comprehensive liability insurance with a carrier licensed and admitted in the State of California.

- (1) Workers' Compensation and Employer's Liability Insurance, as required by applicable Federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the Employer's Liability section of the insurance policy, except when Contract operations are so commingled with the Contractor's commercial operations that it would not be practical. The Employer's Liability coverage shall be at least \$100,000, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers. However, the Contractor in fulfillment of its obligation to provide Workers' Compensation Insurance may maintain a self-insurance program if the Contractor is qualified pursuant to statutory authority to do so.
  - (2) Comprehensive Liability Insurance, including automobiles (owned, non-owned, or leased), completed operations, products, and contractual liability, for a combined single limit of not less than \$1,000,000 for all deaths, injuries, and property damage arising from one accident or occurrence.
- (c) Insurance Certificates and Endorsements. Before commencing work under this Contract, the Contractor shall furnish (i) certificates of insurance for the coverages specified in paragraph (b) above, and (ii) an additional insured endorsement naming the Institute as an additional insured to the contract for the coverage specified in paragraph (b)(2) above. Such certificates and the endorsement shall provide that any cancellation or material change in the insurance policies shall not be effective (i) for such period as the laws of the State in which this Contract is to be performed prescribe, or (ii) until 30 days after the insurer or the Contractor gives written notice to JPL, whichever period is longer. Also, such certificates and the endorsement shall (i) cover contractual liability assumed under this Contract, and (ii) be primary and non-contributing to any insurance procured by the Institute. The Contractor agrees to permit the Institute to examine its original policies, should the Institute so request. Should the Contractor at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, the Institute shall have the right to procure same and the costs thereof shall be deducted from monies then due or thereafter to become due to the Contractor.
- (d) Indemnification. The Contractor agrees that it will be responsible to the Government and the Institute for, and will indemnify and hold harmless the Government and the Institute, its trustees, officers, and employees, from any loss, cost, damage, expense or liability, attorney's fees, or any suit therefor, by reason of actual or alleged property damage or personal injury of whatsoever kind or character, arising out of or in connection with the performance of work hereunder by the Contractor or any of its subcontractors, howsoever the same may be caused, including any of the same resulting from alleged or actual negligent act or omission, regardless of whether such act or omission is active or passive, but excepting only such loss, cost, damage, expense or liability attributable to the sole negligence or willful misconduct of the Government or of the Institute, its trustees, officers or employees.
- (e) Subcontracts.
- (1) The Contractor shall insert the substance of this Article, including this paragraph (e), in subcontracts under this Contract if:
    - (A) The performance of the subcontract includes activities which could endanger non-subcontractor personnel and such activities are performed at a location which is not secured by appropriate subcontractor-controlled access restrictions; or
    - (B) This subcontract requires work on a Government installation or premises under the control of the Institute, unless:
      - (i) Only a small amount of work is required on the Government installation or Institute-controlled premises; or
      - (ii) All such work is to be performed outside the United States, its possessions, or Puerto Rico, modified as necessary to correctly identify the parties.
  - (2) At least five days before entry of each such subcontractor's personnel on the Government installation or Institute-controlled premises, the Contractor shall furnish (or ensure that there has been furnished) to JPL a current certificate of insurance meeting the requirements of paragraph (c) above, for each such subcontractor.

#### **NEW MATERIAL** [CIS – 4/99]

(a) **Definitions.**

- (1) "Material", as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.
  - (2) "New", as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.
  - (3) "Other than new", as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.
- (b) Unless this contract specifies otherwise, the Contractor represents that the supplies, are new and are not of such age or so deteriorated as to impair their usefulness or safety.
- (c) If the Contractor believes that furnishing other than new material will be in JPL's interest, the Contractor shall so notify the JPL negotiator in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due JPL if the JPL negotiator authorizes the use of other than new material.

#### **NOTICE OF RADIOACTIVE MATERIALS** [CT, FP-NR&D, FP-R&D, CIS, T&MC, LH/T&M, FPC, CREI – 4/99] [FAR 52.223-7 – 1/97]

(This Article is applicable only if this Contract is for radioactive materials as defined in this provision.)

Incorporate FAR 52.223-7 (January 1997) with JPL negotiator in lieu of Contracting Officer and adding JPL with the Government in all respects.

#### **ORDER OF PRECEDENCE** [CIS - 1/01] [FAR 52.215-8 - 10/97]

- (a) The rights and obligations of the parties of this Contract shall be subject to and governed by the Schedule, the General Provisions (the term "General Provisions" includes any "Additional General Provisions"), and any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise.
- (b) To the extent of any inconsistency between (i) the Schedule, other than the Alterations Article, (ii) the Alterations Article in the Schedule, and (iii) the GPs, the inconsistency will be resolved in the following order of priority:
- (1) The Alterations Article.
  - (2) The GPs not altered.
  - (3) The Schedule, other than the Alterations Article.
- (c) To the extent of any inconsistency between
- (1) the Schedule, other than any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise, in the Schedule or the General Provisions, and
  - (2) any proposals, specifications or other documents or provisions which are made a part of this Contract by reference or otherwise in the Schedule or the General Provisions,
- (c)(1) has order of precedence over (c)(2).

#### **PAYMENTS AND DISCOUNTS** [CIS – 4/99]

- (a) Invoices shall be submitted in triplicate to the attention of the JPL Accounting Section, unless otherwise specified, and shall contain the following information as applicable: (i) Contract number, (ii) item number, (iii) description of supplies or services, (iv) size, (v) quantity, (vi) unit price, (vii) extended totals and (viii) any other information which may be specified on the face of this Contract. Any applicable state sales or use taxes or Federal excise taxes shall be shown separately on the invoice.
- (b) The Institute shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this Contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this Contract.
- (c) JPL may elect to require the Contractor to accept electronic payments
- (d) JPL shall make its best effort to make payments within the net period, if any, specified in the Contract, measured from the date of receipt of the goods or services at the destination or the date of receipt of the invoice, whichever is later. Discount time periods will be measured from the same date. Payment shall be

deemed to have been made on the date the check is mailed or on the date on which an electronic funds transfer was made. In no event will JPL be liable for or pay a surcharge, interest, or any kind of penalty as a result of JPL's payment not being made within the net period, if any, specified in the Contract or the date of payment by electronic funds transfer.

- (e) Payment for goods or services in accordance with this paragraph will not waive or otherwise affect the right of JPL to inspect such goods or services or to reject, or revoke acceptance of, nonconforming goods.
- (f) Unless otherwise specified in this Contract, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the Contract.
- (g) Except to the extent otherwise stated in the Contract Schedule, JPL's obligation to pay the Contract price for goods delivered or services performed is automatically waived for an amount of \$1,000 or less if no invoice is received by JPL for that amount due within 60 days of receipt of the related goods or services.

#### **RESPONSIBILITY FOR SUPPLIES** [CIS – 4/99]

- (a) Title to supplies furnished under this Contract shall pass to the Government upon formal acceptance by JPL, regardless of when or where JPL takes physical possession, unless the Contract specifically provides for earlier passage of title.
- (b) Unless the Contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to JPL upon:
  - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
  - (2) Acceptance by JPL or delivery of the supplies to JPL at the destination specified in the Contract, whichever is later, if transportation is f.o.b. destination.

#### **TAXES** [CIS – 4/99] [FAR 52.212-4 – 5/97]

The Contract price includes all applicable Federal, state and local taxes and duties. Items of tangible personal property to be delivered under this Contract are for resale to the United States Government (California Resale Certificate No. SR AP 17-006226).

#### **TERMINATION FOR CAUSE – CIS** [CIS – 4/99] [FAR 52.212-4 – 5/97]

The Institute may terminate this Contract, or any part of it, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any Contract terms and conditions, or fails to provide the Institute, upon request, with adequate assurances of future performance. In the event of termination for cause, the Institute shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Institute for any and all rights and remedies provided by law. If it is determined that the Institute improperly terminated this Contract for default, such termination shall be deemed a termination for convenience.

#### **TERMINATION FOR CONVENIENCE – CIS** [CIS – 4/99] [FAR 52.212-4 – 5/97]

JPL reserves the right to terminate this Contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this Contract, the Contractor shall be paid a percentage of the Contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of JPL, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or Contract cost principles for this purpose. This paragraph does not give JPL any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

#### **WARRANTY FOR COMMERCIAL ITEMS** [CIS – 4/99]

The Contractor shall provide JPL with a copy of any standard warranty which is normally offered on a commercial product deliverable under this Contract. This warranty shall be deemed to be incorporated by reference and JPL shall be entitled to all rights under such warranty.

#### **YEAR 2000 COMPLIANCE REQUIREMENT - NEW WORK**

(This provision is not applicable to contracts \$2,500 or less.)

The Statement of Work includes the following performance requirements:

- (a) Definition. "Year 2000 compliant," as used in this provision, means that the information technology (hardware, software and firmware, including embedded systems or any other electro-mechanical or processor-based systems used in accordance with its associated documentation) accurately processes date and date-related data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, and, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date and date-related data with it.
- (b) (1) Any information technology provided, operated and/or maintained under this Contract is required to be Year 2000 compliant. To ensure this result, the Contractor shall provide documentation describing how the IT items or services demonstrate Year 2000 compliance, consisting of standard product literature or test reports for commercial items, test procedures, or other documentation, if any, otherwise specifically required in paragraph (b)(2).
- (2) (RESERVED)
- (c) The Contractor warrants that any IT items or services provided under this Contract that involve the processing of date and date-related data are Year 2000 compliant. If the Contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system.
- (d) The remedies available under this warranty shall include repair or replacement, at no additional cost to JPL (or if this is a cost-reimbursement contract, at no additional fee to JPL) and the Government, of any provided items or services whose non-compliance is discovered and made known to the Contractor in writing within 90 days after acceptance. In addition, all the other terms and limitations of the Contractor's standard commercial warranty or warranties shall be available to JPL for the IT items or services acquired under this Contract. Nothing in this warranty shall be construed to limit any rights or remedies JPL may otherwise have under this Contract with respect to defects other than Year 2000 performance.
- (e) (RESERVED)

## **NOTIFICATION TO PROSPECTIVE CONTRACTORS OF JPL'S ETHICS POLICIES AND ANTI-KICKBACK HOT LINE**

JPL is committed to conducting its business in accordance with the highest standards of ethics and integrity. In this regard, we have an on-going orientation and training program to assure that every JPL employee is aware of this commitment and their individual responsibility for compliance. We must rely on the personal integrity of our employees and the integrity and cooperation of our suppliers and contractors to make sure that these high standards are maintained.

The policies that implement our standards of business conduct state clearly that no employee may solicit or accept any "kickback," gift, gratuity, entertainment, compensation, or favors of any kind from any supplier/contractor or prospective supplier/contractor to JPL. Our policies make it clear that these standards not only apply to procurement personnel but also to employees in all functions and at all levels.

The purpose of this letter is to make sure that you and your employees are aware of our policies, and that together we can achieve and maintain excellence in the conduct of our business relationships.

In the unlikely event that any JPL employee ever attempts to solicit a "kickback," please notify us immediately. JPL has established an Anti-Kickback Hot Line number, (818) 354-9999. Please feel free to call this number collect. The information you provide will be handled with confidentiality, investigated thoroughly, and appropriate action taken.

Thank you for your cooperation and support in this important matter.



## **ASBESTOS NOTIFICATION**

The Jet Propulsion Laboratory is committed to providing a safe and healthy work environment for all personnel.

In the past several years, the Laboratory management, working through the JPL Safety Operations Section - Industrial Hygiene and Workers Compensation Group (SOS - IHWC) and the Facilities Division, has had an on-going program of asbestos identification and control. This program has included bulk sampling, air monitoring, and training for members of the Facilities and Maintenance staff.

Through this program, some of the buildings at JPL have been identified to contain friable sprayed-on fireproofing above the ceilings. At the Oak Grove site, these buildings include 167, 168, 169, 179, 180, 183, 186, 230, 238, 264 and 291, and at the Foothill site, buildings 502, 506 and 507. Asbestos may be present in other JPL buildings in other various forms, including, but not limited to: transite, thermal system insulation, roofing products, ceiling tiles, spray-applied acoustical ceiling, wall materials, and floor tiles/linoleum/mastic.

The majority of asbestos at JPL is located in restricted access areas, such as mechanical rooms, boiler rooms and attics. It is in generally good condition and does not pose a hazard during normal operations.

The SOS-IHAWC staff has taken numerous air samples in JPL buildings. Sampling results indicate that airborne asbestos levels in the buildings are well below regulatory limits and are lower than those found in industrial workplaces where adverse health effects have been observed. Fiber levels in JPL buildings are not significantly different than fiber levels found outside.

Asbestos-containing materials do not pose a health hazard, unless the fibers become airborne. Contractor maintenance/construction/renovation activity involving intentional or accidental contact with friable materials can release fibers; therefore, only authorized and properly trained personnel are permitted to perform work that may disturb asbestos materials.

General written procedures and handling restrictions have been provided to JPL and contractor personnel. SOS-IHAWC must be given notification and, if deemed necessary, a written description of any asbestos-related work to be conducted in areas where asbestos may be present prior to the initiation of activities. The work to be performed will determine if these areas must be tested and cleared. SOS-IHAWC will review sampling results and documentation after completion of contractor activities prior to occupancy.

Pursuant to the California Health and Safety Code (Chapter 10.4, Section 25915), each employee has the right to review all reports about surveys, bulk sampling and air sampling. These reports are available for review during normal business hours. Contact SOS-IHAWC at extension 4-1771 to review these documents or if there are any questions.

## *Notice of Potential Tax Withholding*

JPL is legally obligated to withhold federal and/or state income tax from certain contractor and consultant payments when required by law. Withholding may be required under the following circumstances:

### **1. Nonresident Independent Contractor/Consultant State Source Income Tax**

Payments made to California nonresident contractors or consultants, including sole proprietors, corporations, limited liability companies, and partnerships, that do not have a permanent place of business in CA, or that are not registered to do business in California, are subject to a seven percent state income tax withholding for services performed in California. No withholding is required on payments for goods, or for services performed outside California. See State Tax Form 587 (Nonresident Income Allocation Worksheet) and Form 590 (Withholding Exemption Certificate).

### **2. Nonresident (and Resident) Alien Federal Income Tax**

Payments made to nonresident alien contractors/consultants are subject to a thirty percent federal income tax withholding for services performed in the U.S. unless an exception applies. A nonresident alien from a country with an income tax treaty with the United States may be exempt from tax under the Self-employment Article of the treaty if the individual satisfies the conditions of the treaty article. A nonresident alien from a non-treaty country may claim a daily personal exemption amount. Such nonresident aliens who have a U.S. taxpayer identification number (TIN) – either a U.S. Social Security Number or Individual Taxpayer Identification Number - can submit Federal Tax Form 8233 (Exemption From Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual) to claim a withholding reduction or exemption. No exemption is available for nonresident aliens who lack a TIN. Nonresident aliens not claiming such an exemption should submit Federal Form W-8BEN (Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding). For more information, refer to IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.

Resident aliens should complete Federal Form W-9 (Payer's Request for Taxpayer Identification Number and Certification) to submit a U.S. taxpayer identification number. Resident aliens with no U.S. taxpayer identification number will be subject to back-up withholding, currently at a rate of twenty-five percent.

### **3. Federal or State Tax Liens or Levies**

JPL may be required to withhold payments in an amount necessary to satisfy tax liens or levies or judgments duly issued against contractors or consultants by cognizant tax or judicial authorities.

Disclaimer: JPL is not liable for amounts incorrectly withheld. However, if JPL determines that amounts have been incorrectly withheld, and provided that such amounts have not been remitted to tax authorities, JPL shall refund such amounts to the contractor/consultant.